

FAMILY AND MEDICAL LEAVE LAWS

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AGENDA

- ✕ Family and Medical Leave Act (FMLA)
- ✕ California Family Rights Act (CFRA)
- ✕ Pregnancy Disability Leave (PDL)

BASICS OF FMLA, CFRA AND PDL

FMLA & CFRA	<p>Provides eligible employees up to 12 workweeks of unpaid leave in a 12-month period for:</p> <ul style="list-style-type: none">• Employee's own serious health condition• Care of a newborn child (baby bonding)• The serious health condition of a child, spouse or parent• Placement of a child for adoption or foster care• Care for a domestic partner's child (in loco parentis applies)
FMLA (only)	<ul style="list-style-type: none">• Birth of a child• Pregnancy or prenatal care
CFRA (only)	<ul style="list-style-type: none">• Employee's domestic partner's serious health condition
PDL	<ul style="list-style-type: none">• Provides up to 4 months of unpaid leave for pregnancy disability, childbirth recovery or related medical condition

MILITARY FAMILY LEAVE UNDER FMLA

FMLA (only)

Military Family Leave

Military Caregiver Leave: Allows an eligible employee to take up to 26 workweeks of unpaid leave to care for a current/veteran covered service member during a single 12-month period for an injury/illness that was incurred in the line of duty while on active duty. Includes pre-existing health conditions that were aggravated in the line of duty while on active duty.

- ✓ Spouse
- ✓ Son or daughter
- ✓ Parent
- ✓ Next of kin

Qualifying Exigency Leave: Allows an eligible employee to use their 12 workweeks of unpaid leave for any “qualifying exigency” arising from the service member’s call to active duty to a foreign country, the District of Columbia or any Territory or possession of the United States including international waters.

- ✓ Spouse
- ✓ Son or daughter
- ✓ Parent

EMPLOYEE ELIGIBILITY

FMLA and CFRA

- ✘ 12 months of County Service
- ✘ Worked 1,250 hours in the previous 12 months
- ✘ Permanent, Temporary, Part-time or Recurrent employees

PDL

- ✘ No “hours worked” or “length of service” requirement

Note: For 4850 employees, the 1,250 hour requirement is based on the hours the employee worked prior to the 4850 leave

BENEFITS AND PROTECTION

- ✖ During FMLA and PDL leave, the County must maintain the employee's health coverage.
- ✖ Upon returning from FMLA, CFRA and/ or PDL leave, the employee must be reinstated to the same or equivalent position with the same pay, benefits and terms of employment.

QUALIFYING FAMILY MEMBERS

- ✘ **Parent** - A biological, adoptive, step or foster father or mother, or someone who stood *in loco parentis* to the employee when the employee was a child. *Parent for FMLA and CFRA purposes does not include in-laws.*
- ✘ **Spouse** – Two people legally married, including *same-sex marriage*. Will receive benefits under FMLA and CFRA.
- ✘ **Son or Daughter** - A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis* who is either under 18 years of age, or 18 or older and incapable of self-care because of a mental or physical disability as defined by the Americans with Disability Act (ADA).

Note: for Military Family Leave under FMLA the son or daughter can be of any age.

- ✘ **In Loco Parentis** – to stand in place of a parent. In loco parentis refers to people who are or were responsible for the day-to-day care of and financial support for the child.
- ✘ **Domestic Partner** – will receive benefits under CFRA.

MOST COMMON SERIOUS HEALTH CONDITIONS

- 1) conditions requiring an overnight stay in a hospital or other medical care facility;
- 2) conditions or illnesses that affect an employee or their eligible family member's health to the extent that they must be absent from work on a continuous or recurring basis;
- 3) continuing treatment by a health care provider;
- 4) chronic conditions; and
- 5) pregnancy related medical conditions (incapacity due to morning sickness, medically required bed rest, disability before and after child birth, etc.).

EMPLOYEE'S NOTIFICATION RESPONSIBILITY

- ✖ 30 Days Notice
- ✖ Emergency notice ASAP from employee or employee's representative (e.g. spouse, *adult family member or other responsible party*)
- ✖ Employee must make a reasonable effort to schedule intermittent leave for *planned medical treatment* so as not to disrupt the department's operation



EMPLOYER'S NOTIFICATION RESPONSIBILITY



- ▣ It is management's **responsibility** to designate leave
- ▣ Employee must be notified of designation within 5 business days
- ▣ Certification of Health Care Provider (CHCP) form must be returned within 15 business days
- ▣ FMLA and CFRA are designated upon receipt of medical certification

WORKERS' COMPENSATION INTERACTION WITH FMLA/CFRA

- ✘ An employee's serious health condition can be a result of an illness or injury on the job.
- ✘ In the case of a job-related illness or injury, FMLA and/or CFRA run concurrently with Workers' Compensation leave if the illness or injury meets the definition of a serious health condition ,and the employee is properly notified.

LABOR CODE 4850

(e) No leave of absence taken pursuant to this section by a peace officer, as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or by a city, county, or district firefighter, shall be deemed to constitute family care and medical leave, as defined in Section 12945.2 of the Government Code, or to reduce the time authorized for family care and medical leave by Section 12945.2 of the Government Code.

FMLA/CFRA AND LABOR CODE 4850

Labor Code 4850

- ✘ Provides full benefits to safety employees injured on the job
- ✘ Benefits run for one year or until RTW date (whichever comes first)
- ✘ Cannot run concurrently with FMLA and/or CFRA

Note: For eligible safety employees, leave will be designated as FMLA/CFRA once the employee has exhausted their 4850 time



SCENARIO ONE



Susan is a secretary. She had a trip and fall injury at work on January 3. She received treatment, and the physician removed her from work for 4 weeks, from January 3 through January 31. She is scheduled to return to work on February 1.

Susan has been a permanent employee with the County for five years. Susan worked over 1,250 hours in the previous 12-months.

FMLA/CFRA will run concurrently from January 3 through January 31.

SUSAN'S DISABILITY ILLUSTRATION

12 WEEKS OF FMLA/CFRA

Jan				Feb		Mar					
Wk 1	Wk 2	Wk 3	Wk 4	Wk 5	Wk 6	Wk 7	Wk 8	Wk 9	Wk 10	Wk 11	Wk 12
FMLA will run from January 3 - January 31											
CFRA will run from January 3 - January 31											

SCENARIO TWO



Charlie is a safety 4850 qualified employee. He suffered a back injury at the scene of a fire on January 28. The doctor determined he needs to have immediate back surgery. Charlie is removed from work for 8 weeks (from January 29 through March 26). He has been a County employee for 15 years and worked over 1,250 hours in the previous 12-months.

Should FMLA/CFRA be designated while the 4850 claim is pending?

CHARLIE'S DISABILITY ILLUSTRATION PRIOR TO ACCEPTING 4850 CLAIM

12 WEEKS OF FMLA/CFRA											
Jan			Feb				Mar				
Wk 1	Wk 2	Wk 3	Wk 4	Wk 5	Wk 6	Wk 7	Wk 8	Wk 9	Wk 10	Wk 11	Wk 12
FMLA will run from January 29 - March 26											
CFRA will run from January 29 - March 26											

1. FMLA/CFRA is designated while the 4850 claim is pending from January 29, through March 26.
2. Charlie's 4850 claim is accepted on March 5. The claim is accepted retroactive to the date of injury of January 28.

CHARLIE'S DISABILITY ILLUSTRATION AFTER 4850 CLAIM IS ACCEPTED

12 WEEKS OF FMLA/CFRA AVAILABLE											
Jan			Feb			Mar					
Wk 1	Wk 2	Wk 3	Wk 4	Wk 5	Wk 6	Wk 7	Wk 8	Wk 9	Wk 10	Wk 11	Wk 12

- Because the claim is accepted on March 5, FMLA/CFRA is removed retroactive to January 29.

PAID AND UNPAID LEAVE

Employee's Own Serious Health Condition:

- ❑ Any accrued time (sick, vacation, holiday, OT, etc.)
- ❑ Short-Term Disability
- ❑ Compensatory Time Off (CTO)

Qualifying Family Member:

- ❑ Any accrued time except sick leave
- ❑ Twelve days of Sick Personal
 - California's Kin Care Leave Law allows employees to use up to half of their sick leave accrued within a calendar year to care for a family member.
Runs concurrently with the County's twelve Sick Personal days

OTHER GUIDELINES

- Under most circumstances, FMLA, CFRA and PDL may be taken on an intermittent, continuous or reduced work schedule basis.
- The employee does not need to express rights under FMLA/CFRA. Mentioning a FMLA/CFRA qualifying reason is considered sufficient notice.
- An employee cannot reject designation of FMLA.
- Employees must follow employer's call-in procedures.
- Power of Attorney does not create a relationship for FMLA purposes.

OTHER GUIDELINES CONT.

- *Medical certification can be required every six months for employees with chronic and ongoing health conditions, or every 30 days if frequency and duration significantly differs from the Certification of Health Care Provider.*
- A Human Resources representative (not direct supervisor) can contact employee's health care provider for more information if needed.
- If fraud or abuse is suspected, contact Human Resources.
- Exempt Employees must post their own time for FMLA related absences.

TIMECARD CODING

- ✘ FMLA/CFRA and PDL is unpaid. However, employees may use accrued time to receive pay.

Event Codes:

- ✘ 078 - Leave with pay/ with health benefits
- ✘ 076 - Leave without pay/ with health benefits
- ✘ 074 - CFRA only without pay/without health benefits

- ✘ In all cases, a Reason Code must be used:

- + *150 Continuous Leave (apply to all reasons for continuous leave)*
- + *151 Intermittent Own Illness*
- + *152 Intermittent Pregnancy*
- + *153 Intermittent Care of Child*
- + *154 Intermittent Care of Parent*
- + *155 Intermittent Care of Spouse*
- + *156 Intermittent Care of Domestic Partner*
- + *157 Intermittent Bonding - Newborn*
- + *158 Intermittent Bonding - Adoption*
- + *159 Intermittent Bonding Foster Child*
- + *161 Intermittent Military Caregiver Leave*
- + *162 Intermittent Military Exigency*

FMLA, CFRA & PDL IN THE ABSENCE MANAGEMENT SYSTEM (AMS)

Qualifying Reason	AMS Leave Reasons
Employee's own serious health condition	• Own Serious Health Condition
Care of a newborn (baby bonding)	• Bonding with a Newborn Child
Care of a child's serious health condition	• Child's serious health condition
Care of a spouse's serious health condition	• Spouse's serious health condition
Care of a parent's serious health condition	• Parent's serious health condition
Newly adopted child	• Adoption of a child
Foster care placement	• Placement of a child for Foster Care
Birth of a Child/ Pregnancy or prenatal care	• Pregnancy or Pre-Natal Care
Care of a Domestic Partner	• Dom. Partner 's Serious Health Condition
Care of a Domestic Partner's Child	• Child's Serious Health Condition
Military Personnel Caregiver Leave	• Family Military – Injured Servicemember • Family Military – Injured Veteran
Qualifying Exigency Leave	• Family Military - Exigency

FMLA/CFRA DON'TS



- ✘ **Don't** assume that you're not required to comply with FMLA/CFRA.
- ✘ **Don't** assume that FMLA/CFRA only applies when the employee makes the request.
- ✘ **Don't** make assumptions about what constitutes an illness.
- ✘ **Don't** resent employees taking unforeseeable leave.
- ✘ **Don't** discourage employees from using FMLA/CFRA.

FMLA/CFRA **DON'TS**



- ✘ **Don't** take adverse action against employees who are taking or have taken FMLA/CFRA leave.
- ✘ **Don't** deny a leave to bond or care for a new child.
- ✘ **Don't** prevent an employee from taking approved intermittent leave.
- ✘ **Don't** deny a leave after employee exhausts all the leave entitlement under FMLA/CFRA. The leave may be required under the Americans with Disabilities Act (ADA).

*All of these **Don'ts** can lead to lawsuits!*

FMLA/CFRA DO'S



- ✗ **Do** monitor employees on leave.
- ✗ **Do** communicate with the Departmental FMLA and/or RTW Coordinator.
- ✗ **Do** insist that the medical certification be complete. It is the employee's responsibility to provide a complete certification.
- ✗ **Do** review employee's timecard for FMLA/CFRA and PDL coding to prevent abuse.
- ✗ **Do** follow departmental attendance policies for call in procedures.

ANY QUESTIONS?



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